IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.18934 of 2004

Date of Decision: 13.2.2007

Karnail Singh .....Petitioner

Versus

State of Punjab and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE J. S. KHEHAR
HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.RK Arora, Advocate
for the petitioner.

Mr.BS Chahal, AAG Punjab for the respondents.

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J.S.KHEHAR, J. (Oral)

The petitioner was enrolled in the Indian Air Force on 7.11.1964. On completion of 9 years and 118 days of service in the employment of the Indian Air Force, he was discharged from service on 5.5.1974. Consequent upon his discharge from Indian Air Force, the petitioner sought employment in the Department of Food and Supplies, Punjab. The petitioner was appointed as a Sub Inspector in the Food and Supplies Department on 14.11.1975.

Having been inducted into civil employment, the petitioner claimed increments, seniority and pension under Rule 4 of the Punjab Government National Emergency (Concession) Rules, 1965 (hereinafter to be referred as "1965 Rules"). It is not a matter of dispute that in furtherance of the aforesaid claim made by the petitioner, he was granted increments and

seniority. However, the claim of the petitioner for counting the employment rendered by him in Indian Air Force as qualifying service for pensionary benefits in the course of civil employment was denied to him by order dated 27.9.2004. Relevant extract of the aforesaid order is reproduced hereunder:

> "Revision pension papers along with s/book of the above retiree is returned with the remarks that under the Punjab Civil Services rule 4.6.-A(v), break between military war service and the civil service shall be treated as automatically condoned, provided the period of the break does not exceed one year. Breaks exceeding seven years. So the benefits of military service cannot be given to the retiree."

The aforesaid order has been challenged by the petitioner on the basis of Rule 4(iii) of the 1965 Rules, which is being extracted hereunder:

> "(iii) Pension – The period of Military service mentioned in clause (i) shall count towards pension only in the case of appointments in permanent services or posts under the Government subject to the following conditions:
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> a) The person concerned should not have earned a pension under military rules in respect of the military service in question;
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> b) Any bonus or gratuity paid in respect of military service by the defence authorities shall have to be refunded to the State Government;
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> c) The period, if any, between the date of discharge, from military service or post under the Government shall count for pension provided such period does not exceed one year. Any period exceeding one year but not exceeding three years may

also be allowed to count for pension in exceptional cases under the orders of the Government."

A perusal of the aforesaid Rule reveals that in case the break of service between Military employment and civil employment is in excess of one year but is less than 3 years, the same can be condoned by the State Government. However, in case the break in service is excess of 3 years, the same is not condonable. The claim of the petitioner has been declined on account of the fact that the break in service of the petitioner between military service and civil employment was believed to be in excess of 7 years. This is apparent from the impugned order dated 27.9.2004 extracted hereinabove.

The solitary contention of the learned counsel for the petitioner is that the respondents wrongly arrived at the conclusion that the break in service of the petitioner between his military engagement and civil employment was in excess of 7 years. As a matter of fact, it is the vehement contention of the learned counsel for the petitioner that the petitioner was discharged from military service on 5.5.1974 and inducted into civil employment on 14.11.1975. Although, it is conceded by the learned counsel for the petitioner, that the petitioner was not entitled to automatic condonation of the break in service under Rule 4(iii)(c) of the 1965 Rules, yet it is submitted, that since the aforesaid break in service was less than 3 years, it was imperative for the State Government to take a conscious decision on the issue in hand.

Learned counsel for the respondents having perused the discharge certificate (Annexure P1) and the order dated 7.12.1999 (Annexure P2) acknowledges that the factual position depicting a break of 7

years between petitioner's military service and civil employment was a mistaken conclusion recorded by the respondents in the impugned order dated 27.9.2004. It is also acknowledged that the break in the petitioner's service is of a duration of less than three years.

In view of the above, having arrived at the conclusion that the petitioner's break in service between his military engagement and civil employment was less than 3 years, it was imperative for the State Government, to take a conscious decision, whether or not to condone the same as an exceptional case for allowing the petitioner to count the service rendered by him in the Indian Air Force, as qualifying service, to be added to his civil employment for determining his pensionary benefits.

In view of the above, the instant writ petition is allowed. The state Government is directed to take a conscious decision on the issue in hand in terms of Rule 4(iii)(c) of the 1965 Rules, by passing a well reasoned speaking order, within two months from the date of receipt of a certified copy of the order. In case the petitioner is found entitled to condonation of the period of break in service, his retiral benefits will be re-calculated within a further period of one month and disbursed to him at the earliest possible in accordance with law.

Order dasti on payment of usual charges.

(J. S. KHEHAR)
JUDGE

(S. D. ANAND)
JUDGE

February 13, 2007
SRM